

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	16-CR-614(DLI)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Wednesday, June 20, 2018
DAN ZHONG,	:	
	:	
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE DORA L. IRIZARRY  
UNITED STATES CHIEF DISTRICT COURT JUDGE

A P P E A R A N C E S:

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1           COURTROOM DEPUTY: United States, docket 16-CR-614,  
2 United States versus Dan Zhong, please state appearances.

3           MR. SOLOMON: Good morning, Your Honor, Alex  
4 Solomon, Doug Pravda, Nick Moscow for the government. We are  
5 also joined by a member of the privilege review team,  
6 Elizabeth Macchiaverna.

7           THE COURT: Good morning to all of you.

8           MR. CLEARY: Robert Cleary for Mr. Zhong, also  
9 appearing with me are Dietrich Snell and Brittany Benavidez.  
10 Mr. Zhong is in court with an interpreter sitting next to him.

11          THE COURT: Good morning to all of you.

12          May we have, please have the name of the Mandarin  
13 language interpreter?

14          INTERPRETER: John Lau.

15          THE COURT: Good morning, may we have the oath  
16 administered to Mr. Lau.

17          (Interpreter sworn by Courtroom Deputy.)

18          THE COURT: So, there was quite a bit of motion  
19 practice with respect to the Frank's motion, the motion is  
20 denied. I do have a draft of the order. I have to make a  
21 determination as to whether or not the entire memorandum and  
22 order will be filed under seal, given the way the motions were  
23 made. At least at this point in time, it is possible that at  
24 the end of the case, that all of these things can be unsealed.  
25 And whether or not a redacted form can be posted on the public

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1 docket. So, the decision will be forthcoming shortly.

2 Now, in connection with the various motions in  
3 limine, I have to say it was not-- it was very cumbersome the  
4 way that these motions were filed. I don't know why the  
5 defense didn't just file everything altogether, the way that  
6 the government did. Especially given since all of those  
7 motions were filed under seal anyway. So it would not have  
8 made any difference one way or the other.

9 I am going to reserve decision on the motions in  
10 limine, in part because I do have some questions or  
11 clarification that I wish to seek from the parties today,  
12 based on my review of your papers.

13 So I have got them separated in groups. I do not  
14 have any questions in connection with the defendant Zhong's  
15 motion in limine with respect to the search warrant. I don't  
16 have any questions about that.

17 So I'm going-- the questions that I do have relate  
18 to the government's motions in limine and the defendant's  
19 motions in limine regarding pre-2010 acts, and the non A-2 or  
20 G-2 visas. To a certain extent the government has made cross  
21 motions in relation to that.

22 As an initial matter, because it is relevant to the  
23 question of when the defendant had diplomatic immunity,  
24 because the government-- well, on the one hand, and I do have  
25 questions for the government.

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1           On the one hand, it seems that at least in the  
2 government's omnibus motion, as part of footnote 6, on page  
3 16. The government does not concede that the defendant is  
4 immune from criminal prosecution for acts committed prior to  
5 November 2009. This is in connection with the government's  
6 application to introduce prior bad acts, if you will, in  
7 connection with not only the issuance of the same types of  
8 visas that are at issue here, the A-2 or G-2 visas, but also  
9 non-- different kinds of visas from those, and there are a  
10 variety of them.

11           It is not clear from some of the responses that the  
12 government made, whether the government is in fact contending  
13 that the defendant did not have diplomatic status at all, at  
14 any point in time.

15           If you can answer that, I need some clarification  
16 about that.

17           MR. SOLOMON: Yes, Your Honor.

18           I think our position is, we are not contending at  
19 this point that the defendant lacked diplomatic immunity. But  
20 another way, we are not seeking to prosecute the defendant for  
21 pre-November 2009 conduct.

22           We concede that it is a closer call, whether the  
23 acts committed between 2001 and 2009, constitute official acts  
24 within the defendant's capacity.

25           THE COURT: Let me clarify. I do not like double

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1 negatives, they are always confusing.

2 MR. SOLOMON: Sure.

3 THE COURT: So, is the government conceding that the  
4 defendant had diplomatic status prior to 2009?

5 MR. SOLOMON: Prior to--

6 THE COURT: Or November-- at least up to  
7 November 2009, and I do have questions about that date. But  
8 let me address that separately.

9 MR. SOLOMON: If I can actually address both  
10 questions in one answer, Your Honor?

11 THE COURT: Okay.

12 MR. SOLOMON: According to the records of the United  
13 States Department of State, the Chinese government notified,  
14 officially notified the State Department that the defendant,  
15 would be registered as administrative and technical staff for  
16 the embassy in Washington, D.C., the PRC, and that time period  
17 was between February 2006 and November of 2009.

18 So it is our viewpoint that before November of 2009,  
19 the defendant in fact did have diplomatic immunity.

20 THE COURT: But the defendant was present in the  
21 United States in 2010, still connected with the PRC mission,  
22 the PRC, referring of course to the People's Republic of  
23 China.

24 MR. SOLOMON: Yes, the issue there is that the State  
25 Department did not receive official notification, that he

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1 would be-- his association either with the embassy in  
2 Washington, D.C. or with any diplomatic facility here in New  
3 York would continue.

4 We are happy to provide additional briefing on that  
5 subject. That subject was the subject of extensive briefing  
6 on related Grand Jury litigation both before Judge Gleeson and  
7 before the Second Circuit.

8 THE COURT: Because the indictment charges acts from  
9 January 2010 until November 2016, it seems fairly clear from  
10 the exhibits that were provided by the government in its  
11 opposition memorandum to defendant's motion in limine, with  
12 respect to the visas, right?

13 And prior to 2010 acts. There was-- there were  
14 documents related to Mr. Zhong's application for, as we say  
15 colloquially, a green card, for permanent resident status in  
16 the United States, which was filled out on May 3rd, 2010.

17 And that contains what is called an I-508 waiver of  
18 rights privileges, exceptions and immunities form, where the  
19 defendant states that he waived all rights, privileges,  
20 exceptions and immunities that would otherwise accrue to him  
21 under any law or executive order by reason of such  
22 occupational status.

23 In other words, in the paragraph before that, he  
24 claimed to have an occupational status entitling him to non  
25 immigrant classification. Essentially as a representative of

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1 a foreign government.

2 MR. SOLOMON: Yes, Your Honor.

3 So our position is twofold. First of all, it is our  
4 viewpoint, and this is shared by the Department of State, that  
5 diplomatic privileges and immunities only accrue to those  
6 staff and personnel of diplomatic missions, consulates and  
7 embassies, who are officially notified to the United States  
8 government as occupying such position.

9 That notification applied between the period of  
10 February 2006, November 2009.

11 Secondly, to the extent that he had any privileges  
12 and immunities, that remained after that point, in particular  
13 for official acts that he committed between February of 2006  
14 and November 2009, it is our viewpoint, he waived them in  
15 applying for a green card.

16 THE COURT: Are you arguing that he waived them  
17 retroactively by virtue of his application for permanent  
18 resident status?

19 MR. SOLOMON: Yes, it is our view he waived any  
20 residual immunities that he was still entitled to, I think as  
21 the--

22 THE COURT: Well, still entitled to, meaning  
23 prospectively, not retroactively.

24 MR. SOLOMON: I understand, Your Honor.

25 THE COURT: I don't see anything in this document

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1 and that is part of the argument raised by the defense, that  
2 just reading the plain language of the form, which seems to  
3 bear the defendant's signature, nobody is contesting that that  
4 is his signature. That this is a prospective waiver, not a  
5 retroactive waiver.

6 MR. SOLOMON: I understand. I think I would just  
7 direct Your Honor to the policy statement of the Department of  
8 Homeland Security, which is referenced on page three of our  
9 opposition papers, to the defendant's pretrial motions in  
10 limine.

11 Stating that, in relevant part, an alien cannot hold  
12 both lawful permanent resident status and diplomatic immunity.  
13 And towards that end, the defendant--

14 THE COURT: Sorry, say that again.

15 MR. SOLOMON: An alien cannot hold both lawful  
16 permanent resident status, and diplomatic immunity.

17 THE COURT: But that is prospective. I don't think  
18 the defense is arguing-- I don't think they can argue in the  
19 face of the plain language of that form, that I-508 form, that  
20 the defendant did not waive any diplomatic immunity, residual  
21 or otherwise, that he might have had prospectively from the  
22 signing of that document. Right?

23 Because he is doing it as you analogized, in  
24 consideration for getting the green card, which often times is  
25 the precursor to, I think green card colloquially, you



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1 understand what I mean, the permanent resident alien status,  
2 just as a shortcut.

3 MR. SOLOMON: Yes.

4 THE COURT: Which usually is a precursor to  
5 attaining citizenship status.

6 So you are-- he is giving up something in return for  
7 that. But prospectively. I don't see how you can have a  
8 reading that that applies retroactively. It doesn't say, I  
9 waive the rights that-- and immunities and privileges that I  
10 may have had before the signing of this document.

11 MR. SOLOMON: Your Honor, we understand that  
12 reading. I would just note that we have not charged the  
13 defendant with pre-2010 conduct. And, you know--

14 THE COURT: I understand. To me there is a  
15 disconnect with the position that you take in your opposing--  
16 in your moving papers on page 16, in that footnote, despite  
17 the fact that you are not proceeding with a prosecution for  
18 anything that happened prior to 2010.

19 I see your position as saying that the government  
20 has exercised its prerogative, as it has, to not to bring  
21 charges for the defendant's conduct prior to 2010, but not  
22 because you contend he has diplomatic immunity, residual or  
23 otherwise, because you're still maintaining that he is not  
24 immune for criminal prosecution or the acts committed before  
25 2009. That is different.

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1           You know to say, okay, we are exercising our  
2 charging prerogative, which prosecutors have to bring some  
3 charges and not others. For whatever the reason. That is  
4 different from taking the position that he is immune from  
5 prosecution for whatever acts he committed prior to 2010, when  
6 he had diplomatic status. At least up to November of 2009,  
7 assuming that the position of the Department of State is  
8 correct, and the government's position is correct. Which you  
9 didn't argue in your papers, which I don't understand why.

10           I was not privy to any litigation before Judge  
11 Gleeson, or the Second Circuit.

12           MR. SOLOMON: Sure, Your Honor. I understand and I  
13 apologize for not addressing that in our papers. That wasn't  
14 raised by the defense, the notion that the defendant  
15 maintained diplomatic privileges and immunities through May of  
16 2010, until their final papers.

17           THE COURT: No, but that is not what we are talking  
18 about here. We are talking about prior to that. You are  
19 mixing up the two, the two things.

20           MR. SOLOMON: I apologize for any ambiguity. Let me  
21 try to restate the--

22           THE COURT: That is part of the problem here, nobody  
23 is really coming forward and stating, you know, face forward,  
24 exactly what it is that you are seeking here. There is a lack  
25 of specificity in a lot of what has been asked for here. As

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1 that is part of the problem that I have --

2 MR. SOLOMON: We apologize.

3 THE COURT: -- with this.

4 MR. SOLOMON: I will attempt to clarify.

5 So our position is, the defendant was registered as  
6 a diplomat through November of 2009. For the period between  
7 roughly 2001 and November of 2009, the only privileges and  
8 immunities which accrued to the defendant were for official  
9 acts that he took on behalf of the PRC.

10 After that period, the only immunity that he still  
11 retained was residual immunity as to his official acts between  
12 roughly 2001, and November of 2009.

13 That is our position. You know, I think we can put  
14 the green card application to the side, because that is  
15 somewhat of an extraneous data point.

16 THE COURT: Not all that extraneous, because the  
17 defendant's position is, and again this is why the argument  
18 about what the position of the State Department is, in  
19 connection with who is recognized as having any kind of  
20 privileges and immunities, depends on notifications from the  
21 sending country as the term is used.

22 MR. SOLOMON: Correct.

23 THE COURT: The defense is arguing that even the  
24 time in the indictment is too early.

25 Correct me if I am wrong, Mr. Cleary. I read the

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1 argument that has been raised in your opposition papers, as  
2 saying, that the-- even the time in the indictment contains a  
3 period of time prior to May 3rd of 2010, when he formally  
4 waived any privileges and immunities he may have had, as a  
5 foreign dignitary, to keep it simple, between that January and  
6 that May 5th period, correct?

7 MR. CLEARY: That's correct, Your Honor.

8 THE COURT: Right.

9 So, but you have just raised a different argument  
10 that wasn't briefed, which is this notice issue, and what  
11 effect that has for that period of time. At least the period  
12 of time for the indictment between January and May 3rd.

13 MR. SOLOMON: Correct.

14 THE COURT: Of 2010.

15 That is contained in all of the charges, in the  
16 indictment.

17 MR. SOLOMON: If it would assist the Court, we are  
18 happy to provide additional letter, providing certification  
19 from the State Department as to the relevant period for which  
20 the defendant was notified by the sending state as a  
21 registered diplomat.

22 Additionally, I would note that to the extent the  
23 defendant was registered to the U.S. embassy, but was  
24 performing acts in connection with the consulate, the PRC  
25 consulate in New York City, I believe the State Department's

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1 view would be he was not properly notified for that period  
2 either. To the extent he was only working in New York City  
3 and any acts he committed in New York City would not be  
4 official acts.

5 Lastly, Your Honor, I would note--

6 THE COURT: So we need to have some discussion, we  
7 need to have some discussion about that. I would like some  
8 more clarification as to why it is the government's position,  
9 given what he was -- appears to have been tasked to do, maybe  
10 I am incorrect, an incorrect understanding of what he had been  
11 tasked to do, which was to provide workers to do construction  
12 work at the PRC mission.

13 Is that everybody's understanding of what he was  
14 supposed to be doing? Mr. Cleary?

15 MR. CLEARY: That's correct, Your Honor.

16 THE COURT: So, why is-- what is the government's--  
17 what is the basis of the government's contention that whatever  
18 acts he engaged in, were outside of what he was tasked to do  
19 for the PRC mission, which was to get laborers for the PRC  
20 mission.

21 MR. SOLOMON: It is our view that he was improperly  
22 notified.

23 First of all, during the period April 2002 through  
24 January of 2006, he was notified as a consular employee for  
25 the PRC consulate in New York City. Through the remaining

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1 period, he was notified by the sending state as a staff member  
2 for the embassy in Washington, D.C..

3 Notably, the codefendant in this case--

4 THE COURT: But what does that mean? What was he  
5 supposed to be doing in those capacities?

6 MR. SOLOMON: He was supposed to be working at the  
7 embassy, the PRC embassy in Washington, D.C..

8 THE COURT: Doing what?

9 MR. SOLOMON: I would have to-- the only information  
10 I have in front of me today, he was notified as a staff  
11 member. I can gather additional information that we can  
12 provide to the Court.

13 But I would like to note--

14 THE COURT: If you are-- this is in-- I think in  
15 part at least forms, would inform the Court's decision on the  
16 cross motion of the government to permit the government, for  
17 the Court to permit the government to introduce evidence of  
18 what the government is alleging prior bad acts, the obtaining  
19 of visas, to bring people to the United States to do work  
20 under the same forced labor types of contracts, that are  
21 alleged in the indictment. Post 2010.

22 MR. SOLOMON: I would just point Your Honor to the  
23 State Department's decision with respect to the codefendant,  
24 Wang Landong. This was the subject of the Second Circuit's  
25 opinion in the Grand Jury litigation. That case, Landong was

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1 notified as a diplomat to the United States-- to the PRC  
2 embassy in Washington, D.C. and had been doing work only in  
3 New York City with respect to the consulate, the mission.

4 The State Department's view, and this was affirmed  
5 by the Second Circuit and by Judge Gleason was that he was not  
6 properly notified, so he did not have diplomatic immunity for  
7 that time period.

8 THE COURT: Do you wish to be heard on any of these  
9 issues that I have been making inquiry of?

10 MR. CLEARY: I think Your Honor understands our  
11 position.

12 Just in brief response to what Mr. Solomon said,  
13 this whole issue of notification and Wang Landong case, before  
14 the Second Circuit, none of that was briefed. So I'm not  
15 prepared to respond to that.

16 THE COURT: I'm not-- I would not be faulting you  
17 for that, because I am not prepared to-- I'm not quite sure  
18 even what follow up questions to ask, because I'm not familiar  
19 with that, and to the extent that the government seems to be  
20 relying on that, on the position that it is taking, I think it  
21 would have been relevant to include that.

22 In fact, I would not have relegated the government's  
23 position that the defendant is immune for criminal prosecution  
24 for acts committed before November of 2009, to a footnote.  
25 That is important. That is not a footnote. That is not a

1 footnote position. That is a major position.

2 The moving-- moving on to another question that I  
3 have for the government, in terms of-- let's just call it the  
4 404(b) or 404.3 evidence, about the other visas prior to 2010.  
5 Okay.

6 The government has mentioned visas that were  
7 obtained and contracts that were obtained in 2001, and 2002.  
8 As I understand it, they are seeking to introduce it on a  
9 number of basis, that if true, might make such evidence  
10 admissible. For example, to show the scheme or the plan, the  
11 defendant's knowledge, his intent. The motive and so on.

12 The problem that I have is that there is this huge  
13 gap between 2001 and 2002, and then the acts that are alleged  
14 in the indictment for 2010. So, it is not like the government  
15 has described a continuum of activity, that went from 2001 to  
16 2003 and continued in-- I mean 2001, 2002, but then continued  
17 on through 2003, 2004, 2005, 2006, 2007, 2009. At least I'm  
18 not seeing it in the papers.

19 I mean if the government has proof of that, then it  
20 would have been helpful to know whether that is the case. To  
21 show that, you know, this was a pattern of conduct that does  
22 show, you know, a continuing scheme, if you will.

23 And to show that it is inextricably intertwined with  
24 the scheme that is alleged in the indictment. But there is a  
25 gap. There is a gap of eight years. I just don't see how you



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1 make a connection between, okay, this happened way back then,  
2 and now all of a sudden, we are jumping to-- jumping to 2010.  
3 I think that is one of the arguments that was also raised by  
4 the defense, that there is-- it is not recent enough to be  
5 able to be interconnected. At least not based on the  
6 arguments raised by the government or what you seem to be  
7 seeking to introduce.

8 MR. SOLOMON: Yes, Your Honor.

9 I apologize to the extent we didn't-- our proffer  
10 was not as fulsome as perhaps it should have been.

11 Our evidence shows that beginning in 2001, 2002,  
12 China Rilán, together with this defendant, entered into debt  
13 bondage contracts with workers from China and brought them  
14 here, and forced them to do work as directed, less they lose  
15 their pledged collateral in China.

16 In 2001, 2002, there are a rash of victims who  
17 escaped and who are hunted down.

18 THE COURT: I read all that.

19 MR. SOLOMON: Yes.

20 THE COURT: I understand all of that, and I  
21 understand that the conduct alleged here is similar. But, you  
22 are only talking about-- you are talking about conduct that  
23 occurred a good eight years prior to the conduct that is  
24 alleged here.

25 MR. SOLOMON: Your Honor, I was about to get to

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1 that.

2 THE COURT: Okay.

3 MR. SOLOMON: So, because of the rash of escapees in  
4 2001, 2002, China Rilan raised the collateral required of  
5 people coming to work in the United States. Between 2002, or  
6 2003, going onwards, until this case was taken down, the  
7 pledged collateral was much higher. That was to prevent  
8 people from escaping. So the debt bondage practice continued  
9 unabated between 2001, until this case was taken down in 2016.

10 There was one additional escapee in 2010, and in  
11 that person's contract, there are increased collateral  
12 obligations of that particular escapee, with respect to the  
13 escapees from 2001, and 2002.

14 Our proof will consist of testimonial evidence  
15 regarding the continuous nature of this debt bondage practice  
16 between 2001, going onwards to 2016. Either by confidential  
17 sources or by people with knowledge as to China Rilan.

18 THE COURT: So the evidence that the government  
19 purposes or seeks to introduce also concerns these contracts  
20 that were entered into between 2002 and 2010?

21 MR. SOLOMON: That's correct, Your Honor.

22 THE COURT: Would you like to respond to that?

23 MR. CLEARY: Thank you, Your Honor.

24 As I analyze this, this evidentiary issue, I look at  
25 it as two different pieces of pre-charged evidence they are

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1 trying to get in. I think analytically they should be kept  
2 separate.

3 The first is the one or two incidents of physical  
4 restraint which took place allegedly in 2001, and 2002. There  
5 is no allegation of any acts of physical restraint from that  
6 period of time, 2001, 2002, all the way to eight years later,  
7 to 2010, during the indictment phase.

8 So I think the physical restraint, there is enormous  
9 gulf between the two incidents they refer to on the physical  
10 restraint side and the charged period of time. It is  
11 inadmissible on that basis.

12 The second piece of evidence, second bucket of  
13 evidence are these contracts, the employment contracts that  
14 the government refers to. They have represented to the Court  
15 that those contracts run throughout the pre-indictment period.

16 We have no idea what that evidence is, Your Honor.  
17 They have not provided any of those contracts to us.

18 We have one contract and one contract only, and it  
19 is during the indictment period. We have not seen a single  
20 contract from the pre-indictment period. They have not  
21 alleged it in any pleading or affidavit. It is not in the  
22 indictment. It is not in the Complaint. It is not in the  
23 search warrant affidavit.

24 All they have done is made relatively vague  
25 references to those supposed contracts. In their motion in

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1 limine and as amplified by Mr. Solomon today. We don't know  
2 who the contracting parties are. We don't know if the  
3 contracts were executed at all. We don't know what the terms  
4 are.

5 So I think it is inappropriate on a motion in  
6 limine, with all of those unanswered questions, which could be  
7 outcome determined, for the Court to grant a ruling that any  
8 of this pre-charged conduct is admissible.

9 THE COURT: Let me hear from the government about  
10 the later point that was made by counsel.

11 MR. SOLOMON: By the later point being that--

12 THE COURT: About the discovery concerning-- and no  
13 discussion about any of the labor bondage contracts between  
14 2002 and 2010.

15 MR. SOLOMON: Correct, Your Honor.

16 First I would note that the contracts, the labor  
17 contracts with the escapees are the subject of the Court's  
18 March 2017 Rule 16(d)(1) order, which permits us to disclose  
19 those contracts to the defense 120 days before the trial.  
20 They are also the--

21 THE COURT: That is for the escapees, okay.

22 MR. SOLOMON: Correct.

23 THE COURT: But, we are talking about a period of  
24 time where there may not have been any escapees, but still  
25 workers who entered into these bondage contracts, correct?

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1 MR. SOLOMON: That's correct, Your Honor.

2 THE COURT: From 2002 to 2010.

3 MR. SOLOMON: During that--

4 THE COURT: We are talking about a number of  
5 different groups here, right? So there are the escapees, are  
6 there any additional escapees between 2002 and 2010?

7 MR. SOLOMON: No, the only escapees that occurred  
8 are 2001, 2002, and 2010.

9 THE COURT: Okay.

10 MR. SOLOMON: And as I mentioned, the evidence  
11 regarding the use, the continued use of debt bondage contracts  
12 between 2002 and 2010, is testimonial in nature. There will  
13 be no Rule 16 disclosures in that regard.

14 THE COURT: Say that again to me.

15 MR. SOLOMON: The evidence regarding the continued  
16 use between 2002 and 2010 of the bondage contracts, is  
17 testimonial in nature. There will be no Rule 16(d)  
18 disclosures of additional contracts during that period.

19 THE COURT: There is no physical documents?

20 MR. SOLOMON: There are no physical documents.

21 The physical documents that we have, and we obtained  
22 judicial authorization to delay discovery of, are the  
23 contracts relating to the escapees, the ones from 2001, 2002,  
24 2010.

25 Lastly, I would note that Mr. Cleary argues that

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1 there are two different strands of conduct here. It is our  
2 view, it is one in the same.

3 The use of the bondage contracts, was throughout.  
4 And, the persons, the escapees who are the subject of  
5 rendition efforts by the defendant, and other members of China  
6 Rilan, entered into the same bondage contracts that the  
7 workers who did not escape between 2002, and 2010, entered  
8 into.

9 Moreover, in 2010, when one of the workers escaped  
10 again, the evidence will show that this defendant sent a  
11 rendition squad to attempt to locate the escapee.

12 The mere fact that the rendition squad was  
13 unsuccessful in locating the escapee, does not mean that the  
14 conduct in 2001, 2002, is more inflammatory than what occurred  
15 in 2010.

16 THE COURT: I have a question for Mr. Cleary or  
17 anybody on the defense team who wants to answer it.

18 The government has provided a decision from a court  
19 of concurrent jurisdiction, from Wisconsin, on a rather  
20 similar issue in connection with the introduction of alleged  
21 prior bad acts, that were alleged to have occurred when the  
22 defendant in that case, had diplomatic immunity. There was no  
23 question in that case, everyone agreed that at the time in  
24 question, that defendant had diplomatic immunity with the PRC.

25 It appears that the-- and granted that that is a

1 court of concurrent jurisdiction, it is not a published  
2 opinion. So, it has perhaps some persuasive value, although  
3 it is not binding precedent.

4           Nonetheless, it appears that the crux of that ruling  
5 is that there is nothing in the consular convention between  
6 the United States and the PRC, that serves as an evidentiary  
7 exclusionary rule, with respect to the acts that were alleged  
8 to have occurred in a prosecution that occurs after the  
9 termination of diplomatic immunity for conduct after the  
10 termination of diplomatic immunity in this-- at least in the  
11 situation where-- as that court found that the-- the acts were  
12 pertinent to the acts in question in the prosecution.

13           I looked through the language that was cited in the  
14 opinion and some of the language that has been cited by the  
15 government. Where in the ruling or where in the convention  
16 is-- do you find language that lends support to your  
17 contention that the fact of diplomatic immunity serves as an  
18 exclusionary rule for evidence?

19           MR. CLEARY: I find-- our argument, Your Honor, is  
20 based upon the notion and the objectives and purposes of the  
21 diplomatic immunity doctrine. I can explain that to you if  
22 you would like.

23           So our position is that during the pre-2010 period,  
24 as you know, our position is that he-- Mr. Zhong enjoyed the  
25 protection of diplomatic immunity and the government tries to

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1 get around that by arguing as they have, that he was not  
2 charged, Mr. Zhong was not charged for pre-2010 conduct, so  
3 evidence of pre-2010 conduct is admissible. That is the  
4 government's position.

5 There are two problems with that argument, Your  
6 Honor. They are going to be offering, they are trying to  
7 offer, concededly immunized acts, in order to prosecute Mr.  
8 Zhong for the charges in the indictment, and that attempt lies  
9 in the face of the notion of diplomatic immunity.

10 He cannot be prosecuted based on immunized conduct,  
11 and if that evidence comes in, that is exactly what would  
12 happen.

13 The second problem with the government's argument,  
14 is that one of the main purposes of diplomatic immunity--

15 THE COURT: Well, except the government is  
16 contending, argues for example that even though a person  
17 cannot be prosecuted for a murder, for example, while that  
18 person has diplomatic immunity, if the murder is committed  
19 after immunity privilege has ended, but it was planned before  
20 immunity ended-- for example, let's say it is a contract  
21 killing and the contract was negotiated and paid for at least  
22 in part, I give you some money up front to kill this person, I  
23 will give you the rest of the money after the murder has been  
24 done. They argue that they should be entitled to introduce  
25 that evidence, because obviously it is extractably



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1 intertwined, it helps complete the story, it helps explain the  
2 defendant's state of mind, his intent, his knowledge and so  
3 on.

4 But in addition, it is arguably outside the kind of  
5 conduct, unless it was done at the direction of the sending  
6 company, country, that is-- let's leave that complication to  
7 the side. I watch way too many spy things.

8 But, their argument is, that that would be outside  
9 of the duties, right, that the person now accused of the  
10 murder who had immunity was tasked with.

11 What I am hearing the government say now, which  
12 wasn't fully fleshed out in their papers, is that the  
13 defendant's acts were not acts that were consistent with the  
14 duties that he was actually immunized for in connection with  
15 the mission, the PRC mission.

16 Either during the time that he was in New York City  
17 or the time he was in Washington, D.C..

18 MR. CLEARY: On that argument, Your Honor, we  
19 believe-- we just disagree with the government. We believe  
20 these were official acts and the reason we believe these were  
21 official acts, is at the pre--- during the pre-indictment  
22 phase, Mr. Zhong was here, the whole purpose of him being in  
23 the United States, was as an employee of China Rilán, Chinese  
24 company, doing their work in these construction projects at  
25 the diplomatic facilities that you have heard about. That is

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1 the only reason he was here. That is what he was sent here to  
2 do.

3 The acts that the government complains of, the  
4 pre-charged conduct, they are trying to get into evidence, is  
5 all activities that Mr. Zhong engaged in as part of those job  
6 responsibilities, working to get workers at the diplomatic  
7 facilities and to keep them working at the diplomatic  
8 facilities. That is his job. So they are official acts.

9 As to the argument, that the government's argument,  
10 that the immunized, those official acts, those immunized acts  
11 are admissible in charging and prosecuting Mr. Zhong for a  
12 period of time where he is not immunized. The problem with  
13 that is, if there is a conviction, it will be because that  
14 immunized conduct was introduced into evidence at trial. And  
15 therefore, he would be convicted based on immunized acts.

16 That we believe is impermissible by the whole  
17 notion, the doctrine of diplomatic immunity.

18 The other problem with the government's argument,  
19 Your Honor, is that one of the main purposes of diplomatic  
20 immunity, is to afford foreign diplomats who are here, and  
21 U.S. diplomats who work abroad, to afford them a zone of  
22 completely protected conduct. This way, they can exercise the  
23 diplomatic powers, without fear of immediate interference,  
24 like being arrested, and without fear of subsequent reprisal.  
25 That is being prosecuted for their diplomatic acts when they

1 are no longer diplomats.

2 And both of those risks, and this immediate  
3 punishment or interference and the risk of subsequent  
4 reprisals are equally harmful and would have the same chilling  
5 effect, on the unbiased and unfettered exercise of diplomatic  
6 power.

7 So, in short, the government's position would  
8 undermine the very purpose and objective of the diplomatic  
9 immunity doctrine, including through U.S. diplomats, former  
10 U.S. diplomats who have served our country abroad.

11 THE COURT: The government want to respond to that?

12 MR. SOLOMON: Yes, I think it is important to note  
13 that diplomatic immunity offers immunity from prosecution for  
14 the time period when a person is an accredited diplomat. It  
15 is not an evidentiary privilege that precludes the government  
16 from introducing acts occurring during the time period when a  
17 person is a diplomat.

18 The defendant offers no statute, no treatise, no  
19 case, or rule evidence that supports this notion that anything  
20 that he did, cannot be used. All we are seeking to do here is  
21 to use it.

22 THE COURT: But, it goes back to the very foundation  
23 of diplomatic immunity, right? The whole point is to provide  
24 mutual protection, right? To our country as a sending  
25 country, if we send people abroad. If we have people going to

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1 the PRC and vice-versa, to provide them that zone of  
2 protection.

3 And, I think the logical extension of the argument  
4 that the defense is making, is that absent this absolute zone  
5 of immunity, would have a chilling effect. You would not get  
6 people who would want to serve on the diplomatic service, if  
7 they were afraid that even a mistake, could be conceived as,  
8 you know, violative of the law of the country that they are in  
9 at the time.

10 MR. SOLOMON: I think in this case--

11 THE COURT: And then you would have the problem  
12 where no country could be guaranteed the safety of their  
13 diplomats short of just pulling them out immediately prior to  
14 any termination of service. Assuming that there is no  
15 extradition.

16 MR. SOLOMON: In this case, we are not seeking to  
17 prosecute the defendant for conduct being committed between  
18 2001 and November of 2009. We are seeking to introduce  
19 evidence of what he did during that time period, to show that  
20 between 2001, and 2016, he was a principal of China Rilán.  
21 That he arranged these contracts.

22 When people escaped, he organized crews to run after  
23 them. So that we don't end up with a trial that shows, in  
24 2010, he is principal of China Rilán, the jury doesn't  
25 understand how that happens. They don't understand how he

1 negotiated for these debt bondage contracts.

2 He is going to argue and he has argued repeatedly  
3 the acts of other China Rilan employees, and representatives  
4 were acts he had no knowledge of. So when-- an escapee from  
5 2010 testifies, we expect them to argue and they have  
6 indicated through the papers, they will argue, that escapee is  
7 not to be believed.

8 So it is absolutely critical, that for the jury to  
9 understand the entire story of what happened here, the  
10 defendant was the principal beginning in 2001, that continued  
11 unabated until his arrest in 2016.

12 THE COURT: Mr. Clearly why wouldn't, if the Court  
13 were to permit the government to bring in this evidence, why  
14 wouldn't a limiting instruction to the jury suffice to protect  
15 any prejudice to the defendant?

16 MR. CLEARY: Because Your Honor--

17 THE COURT: In terms of, you know the effect on  
18 diplomatic immunity.

19 MR. CLEARY: Well, for two reasons.

20 First of all, if that were the instruction, that  
21 they should not be considering the pre-charged conduct for  
22 purposes of prosecuting him, reaching a guilty verdict for the  
23 charged conduct, then that pre-charged conduct is completely  
24 relevant. Number one.

25 Number two, I believe it would be an impossible task

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1 for any juror--

2 THE COURT: Not necessarily. We give limiting  
3 instructions all the time, admitting-- and the government had  
4 a number of cases as examples, where this type of conduct has  
5 been admitted, to complete the story. To show relationships  
6 between people. To show-- to put things in context, to  
7 complete the story.

8 MR. CLEARY: I think--

9 THE COURT: As opposed to proving that the defendant  
10 actually committed the acts charged within the period of time  
11 specified in the indictment. Otherwise the jury is left to  
12 wonder, well, how did the defendant get involved in this  
13 company.

14 MR. CLEARY: I have no problem with that concept.  
15 What makes this different is the conduct we are talking about,  
16 is immunized conduct. So it is one thing to tell a jury when  
17 you are not talking about immunized conduct. One thing to  
18 tell the jury, you can use this evidence as the Court  
19 instructs them for a limited purpose as the case maybe. It is  
20 another matter entirely I believe to tell the jury, they can't  
21 consider this evidence for any purpose in convicting the  
22 defendant, because if they did that, consider the pre-charged  
23 conduct, for any purpose, plan, scheme, motive, continuing  
24 act, whatever it may be, for purposes of convicting him on the  
25 charged crimes, we would have run a foul of diplomatic

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1 immunity because by its very definition, the immunized conduct  
2 would be used to prosecute the defendant. That is what makes  
3 this different, Your Honor.

4 THE COURT: Do you wish to respond to that Mr.  
5 Solomon?

6 MR. SOLOMON: One moment, please, Your Honor.

7 THE COURT: Sure.

8 (Pause.)

9 MR. SOLOMON: Just briefly, Your Honor.

10 I think Mr. Cleary is conflating the notion of what  
11 evidence can be used to convicted the defendant in this case,  
12 that evidence is all post January 2010 evidence.

13 The earlier evidence is merely to show the  
14 background of the conspiracy, to show the defendant's  
15 knowledge of the scheme, and the relationship between the  
16 defendant and the various actors in this case.

17 I think as Your Honor noted, limit-- the Second  
18 Circuit has repeatedly approved of limiting instructions and  
19 with respect to both 404(b) evidence and also evidence of  
20 background to the conspiracy.

21 THE COURT: Let's move on to another question that I  
22 have in connection with alleged false statements by the  
23 defendant in non A-2 and G-2 visas.

24 The government has represented that it will not  
25 introduce evidence in its case in chief or make arguments in

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1 its case in chief, at trial, concerning any other types of  
2 visas including B1, B2, H1B, and F1 visas.

3 However, what the government is requesting that it  
4 is, if the defendant chooses to testify in his defense at  
5 trial, then the government would want to cross examine the  
6 defendant about false statements in these other visa  
7 applications. And the A-2 and G-2 visa applications are the  
8 subject of Count Five of the indictment.

9 First of all, I am not sure what these other visas  
10 were issued in connection with, and whether they are false  
11 statements of the defendant himself or false statements of  
12 other people.

13 MR. SOLOMON: Mr. Pravda will answer this.

14 THE COURT: It is a compound question, I apologize.

15 MR. PRAVDA: Your Honor, the government's intent is  
16 only to introduce false statements by the defendant in  
17 connection with cross examining him. We would only impeach  
18 the defendant with his own false statement, not with false  
19 statements made by anyone else in connection with other visa  
20 applications.

21 THE COURT: What were these other visas in  
22 connection with?

23 MR. PRAVDA: So, for example, Your Honor, one piece  
24 of information that the government has in this case is that  
25 certain visas were requested by U.S. Rilan, the defendant's



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1 company, not for any legitimate purpose within that company,  
2 but simply to allow relatives of the owner of China Rilan, who  
3 is the defendant's uncle, Wong, to come into the United  
4 States.

5           So there were false statements made in connection  
6 with visa applications, that represented those individuals  
7 would be coming in for purposes that were false. And the  
8 defendant signed one of these visa applications that the  
9 government has information, that is false. That is an example  
10 of something that the government would cross examine the  
11 defendant about, should he choose to testify at the trial.

12           THE COURT: You wish to respond to this?

13           MR. CLEARY: Just briefly, Your Honor.

14           I don't really know what these visa applications are  
15 beyond what Mr. Pravda just described to us.

16           I think this is an issue that probably is  
17 inappropriate for an in limine ruling. As we sit here today,  
18 I mean we don't know whether Mr. Zhong is going to testify or  
19 not. And if he did, you know, we can take it up at that  
20 period of time.

21           THE COURT: I am not intending to delay the jury in  
22 any way for the Court to be able to decide issues that I could  
23 be deciding now. Obviously whether or not Mr. Zhong decides  
24 to testify is a choice that is up to him, and I would not be  
25 putting his feet to the fire to decide that at opening

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1 statements or even at any point in time during the  
2 government's case. Only until such time as it is the  
3 defense's turn to decide whether or not it is going to put on  
4 a case. That is always a decision that I believe a defendant  
5 has a right to make, only once it has seen the whole case in  
6 chief.

7           So, I am not-- I don't mean by any consideration of  
8 the government's request to in any way bind the defendant to  
9 anything. Just to be clear about that.

10           But to the extent that this is really a purely legal  
11 decision as to whether or not any-- were these false  
12 statements made under oath? Were these false statements that  
13 were made under oath?

14           MR. PRAVDA: They were submitted, I believe under  
15 penalty of perjury. The application itself indicated that it  
16 had to be signed under penalty of perjury.

17           THE COURT: I think that that is purely a legal  
18 decision that is made obviously contingent on whether or not  
19 the defendant testifies. The government would be precluded  
20 from introducing that in its case in chief, and in fact, the  
21 government has represented that it is not intending to use it  
22 in its case in chief.

23           My question to you at this point is, is there any  
24 legal basis for the Court precluding the government from using  
25 those documents to cross examine the defendant, should he

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1 decide to testify at the trial?

2 MR. CLEARY: I would agree that you know false  
3 statement made by a testifying witness is generally fair game  
4 if it is a material false statement.

5 The only restriction on the use of the evidence that  
6 I am aware of is under 608(b), where they can cross examine on  
7 certain acts, but not introduce the underlying documents or  
8 evidence.

9 THE COURT: Bear with me for one second.

10 (Pause.)

11 THE COURT: I just wanted to be clear about the  
12 Redfield affidavit, this goes to the government's motion in  
13 limine. Is that as a response, if the defense calls him to  
14 testify?

15 MR. SOLOMON: No. Only if-- we intend to call Mr.  
16 Redfield to testify. It is only if he is cross examined about  
17 the specific affidavit that the defense drafted for him to  
18 sign, that we would on redirect examination, seek to introduce  
19 the circumstances surrounding creation of the affidavit.

20 THE COURT: Do you wish to respond to that?

21 MR. CLEARY: Just briefly, Your Honor.

22 I am not sure. First of all, I am not sure we are  
23 going to cross examine him on the affidavit. If we did, and  
24 the government made that application, I would want at the  
25 time, I would encourage the Court to come up with a balancing

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1 ruling on this, because the circumstances they are referring  
2 to, were some activities by our predecessor counsel.

3 THE COURT: I understand.

4 MR. CLEARY: So I would want to make sure that there  
5 is nothing that they elicit that will reflect negatively on  
6 Mr. Zhong or us as counsel. I might have a position on that  
7 at the time.

8 THE COURT: As I said, I will defer ruling on that.  
9 I want to think about it some more. But, it may very well be,  
10 this maybe an application that maybe premature at this point  
11 in time. I will have to see how the testimony progresses  
12 during the course of the trial.

13 I'm not saying that I would be precluding the  
14 government from going into the circumstances of the  
15 preparation of the affidavit. But I think-- I think it is  
16 just a little bit premature at this point until I actually see  
17 how the testimony comes out both on direct and cross  
18 examination.

19 But, I am glad that it has been raised now, so that  
20 we can all think about it in advance and it doesn't quite take  
21 everybody by surprise when and if the time comes in connection  
22 with that.

23 So those are the questions that I had in connection  
24 with the motions in limine. I would like some additional  
25 briefing on that issue that we discussed in connection with

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1 the diplomatic immunity based on notice to the State  
2 Department.

3 It is the government's position, so if we could  
4 have-- I will take letter briefs as opposed to a formal  
5 motion.

6 When can you have that for me?

7 MR. SOLOMON: Your Honor, if I can ask for two weeks  
8 simply because we would need an official certification from  
9 the State Department.

10 THE COURT: Is that going to give you enough time  
11 given the fourth of July?

12 MR. SOLOMON: That maybe a bit aggressive.

13 THE COURT: Yes, kind of, I think.

14 How about July 11th?

15 MR. SOLOMON: That is fine, Your Honor, thank you.

16 THE COURT: How much time Mr. Cleary for your  
17 response?

18 MR. CLEARY: Just one second, Your Honor.

19 (Pause.)

20 THE COURT: Do you have a citation to that Second  
21 Circuit case?

22 MR. SOLOMON: I don't with me, Your Honor. I can--

23 THE COURT: It will be helpful if-- I guess you will  
24 discuss it in your papers anyway.

25 MR. SOLOMON: I can also provide a letter today with

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1 a citation if that is helpful.

2 THE COURT: That will be helpful, yes.

3 MR. CLEARY: We have a week, Your Honor?

4 THE COURT: Would you like time to reply to the  
5 defendant?

6 MR. SOLOMON: Sure. If it is not necessary, we will  
7 indicate to the Court that we are not replying.

8 THE COURT: So, July 25th for reply.

9 There is one other-- I'm sorry, I did have a  
10 question with respect to the government's request for  
11 reciprocal discovery and preclusion.

12 Has any reciprocal discovery been made by the  
13 defense?

14 MR. CLEARY: It has not, Your Honor.

15 THE COURT: The defense should understand that if  
16 there should have been reciprocal discovery made, that was not  
17 made, that the defense may find itself precluded from using  
18 that evidence. So as long as Mr. Zhong understands that and  
19 counsel understands that.

20 MR. CLEARY: We understand. We are just-- so the  
21 Court knows, we are not in a position right now to figure out  
22 what documents we will be seeking to use in our case in chief.

23 And realistically, I don't think we will be in a  
24 position to do that until we get full discovery from the  
25 government. Like the employment contracts have not been

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1 produced to us yet. There is pretty significant discovery we  
2 don't have yet.

3 THE COURT: I do understand that, to a certain  
4 degree reciprocal discovery is tied to what the government  
5 produces. But, then again, with respect to anything that  
6 might be in the defendant's possession that you have not  
7 received yet from the government that clearly you have that--  
8 might likely be used, then you might-- you are risking  
9 preclusion if you don't turn that over and it should have  
10 been.

11 MR. CLEARY: Understood, Your Honor, thank you.

12 THE COURT: So, the balance as I understand it, I  
13 know that there has been some continuing Rule 16 discovery. I  
14 see the letters that have been going back and forth. Not that  
15 I feel that I necessarily want to see all of that clogging up  
16 the docket. Because it is -- I don't see the attachments, so  
17 not that I'm interested in seeing the attachments either.

18 But, as far as I can tell what remains is the  
19 discovery that is under the protective order, the timing of  
20 which disclosure is dependent on setting of the trial date.  
21 Correct?

22 MR. SOLOMON: That's correct. Mr. Pravda, I believe  
23 will discuss some other discovery related issues.

24 THE COURT: Why don't we discuss the other discovery  
25 related issues first.

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1 MR. PRAVDA: Sure.

2 In addition to the discovery, under the protective  
3 order, meaning the category of outstanding material, Your  
4 Honor. There are some search warrant returns that we have  
5 either very recently received or expect to receive from search  
6 warrants of third parties that the government had served. In  
7 fact in some cases, years ago.

8 As the Court will recall, there were a number of  
9 service providers, that in response to the Microsoft decision,  
10 in the Second Circuit, declined to provide the government with  
11 electronic data. That was responsive to search warrants that  
12 were stored outside of the United States.

13 With the recent enactment in Congress of a bill to  
14 rectify that issue, the service providers have now been  
15 producing to the government, responsive material from the  
16 prior warrants, which the government in some cases has also  
17 updated.

18 So, we received a production for example several  
19 weeks ago, which we are in the process of going through. We  
20 are reviewing and a translation review, because that material  
21 is in Chinese. We will be providing some of those materials  
22 to the defense shortly.

23 Then we still expect to continue to receive from  
24 providers, additional responses, E-mails, so that is the  
25 outstanding things at this point, other than what is subject



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1 to the protective order.

2 THE COURT: Is there anything outstanding from the  
3 taint team?

4 MS. MACCHIAVERNA: No, Your Honor. The taint team  
5 has completed its review of all the materials it has received  
6 from the prosecution team to date. It sounds as if we will be  
7 receiving some additional search warrant to go through filter  
8 team. We will complete the review of those materials  
9 expeditiously and produce them to the prosecution on a rolling  
10 basis.

11 THE COURT: How long is the trial of this case  
12 expected to take?

13 MR. PRAVDA: We are expecting an approximately two,  
14 perhaps three weeks for the government's case.

15 THE COURT: And again, I don't like to hold the  
16 defense's feet to the fire on this, but if you can give me  
17 some sort of estimate.

18 Are you taking into consideration any potential  
19 defense cross in the Government's estimate?

20 MR. PRAVDA: I think we are, Your Honor.

21 MR. CLEARY: I would estimate about one week for the  
22 defense case, Your Honor.

23 When the Court is ready, I do have two follow up  
24 issues on the discovery that you were talking to the  
25 government counsel about.

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1 THE COURT: Okay.

2 (Pause.)

3 THE COURT: I am assuming that doesn't include jury  
4 selection time and deliberation time.

5 MR. PRAVDA: It doesn't, Your Honor. But we are  
6 taking into account the fact that a number of witnesses are  
7 going to be testifying in Chinese, and so there will be  
8 translation and that will slow down the testimony. We have  
9 taken that into account in our estimate.

10 THE COURT: Yes, let me hear you about discovery.

11 MR. CLEARY: Thank you, Your Honor.

12 Just two areas that I want to inquire about as to  
13 when they are going to be produced to us.

14 One are the diplomatic notes. This is the  
15 correspondence related to the issuance of the visas. That's  
16 the correspondence between the Department of State, and the  
17 embassy. And we had requested that all of the diplomatic  
18 notes for the indictment period, January 2010, till November  
19 of 2016 be provided.

20 The government has only given us the diplomatic  
21 notes for the very tail end of the indictment periods,  
22 March 2016 through November 2016. We have been back and forth  
23 with the government on it. I know they are dealing with the  
24 Department of State, to try to fulfill our requests.

25 But our request has been pending since 2017. These

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1 reviews have critical documents for Count Five, which is the  
2 visa fraud count.

3 So, I would like to try to get the government to  
4 produce the full range that we asked for as quickly as  
5 possible.

6 THE COURT: What is the status of that?

7 MR. PRAVDA: Your Honor, the short answer is that we  
8 have been working very closely with the State Department to  
9 obtain those documents. The State Department has gathered  
10 relevant documents and they are in the process of  
11 corresponding with the PRC government about this request.

12 Because these are diplomatic communications from one  
13 country to another, there is a certain sensitivity that  
14 requires the State Department to coordinate with the foreign  
15 government prior to giving the Justice Department permission  
16 to disclose those to a private, not a private, to a-- in the  
17 discovery process.

18 So the State Department is going through that. We  
19 obviously have no control over how long that specific process  
20 is going to take.

21 THE COURT: Have they given you an estimate how long  
22 it will take? Can you get an estimate as to how long it will  
23 take?

24 MR. PRAVDA: Your Honor, given the caveats, Your  
25 Honor, if all goes well, by which I mean, that there are no

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1 complications that arise from this conversation between the  
2 State Department and the PRC, they are hopeful that they can  
3 give them to us this summer.

4 But they have--

5 THE COURT: What does that mean, the summer starts  
6 tomorrow and continues until September. So, what does that  
7 mean?

8 MR. PRAVDA: I'm thinking July, August, Your Honor.

9 However, they did caution that there are a number of  
10 issues that can complicate that. Including the current status  
11 of the U.S. relationship overall.

12 So, that is the caveat that they offered me and so I  
13 have offered that to the Court.

14 I will say, Your Honor, that we have-- are engaged  
15 in weekly calls with the State Department to keep on top of  
16 the progress. They understand this is an important issue and  
17 they are working toward doing that as quickly as they can,  
18 given the reality of the factors that they are engaged in a  
19 foreign government with this issue.

20 THE COURT: What is your second?

21 MR. CLEARY: The second and final one, Your Honor,  
22 relates to translations in the December pretrial conference.  
23 The government represented that it would provide the  
24 translations of the Chinese language documents, that it  
25 intends to use at the trial, as well as translations of the

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1 prison phone calls that it intends to use at the trial, as  
2 soon as those translations are ready.

3 And, I would like to get those as quickly as  
4 possible, because our translations are not necessarily going  
5 to be the same as theirs. So I will have a back and forth  
6 with the government to resolve those differences.

7 THE COURT: When will those be turned over?

8 MR. SOLOMON: Your Honor, we are working  
9 expeditiously with F.B.I. linguists to finalize the documents  
10 we intend to use at the trial. It is my hope within  
11 six weeks, we can turn everything over that we intend to use  
12 at the trial, with the caveat that there may come, there maybe  
13 some additional materials that come into the government's  
14 possession as we receive them from service providers.

15 THE COURT: Well, to the extent that there maybe  
16 issues concerning translations, I don't know if you are  
17 planning to use recordings, are you planning to use  
18 recordings?

19 MR. SOLOMON: The only recordings I'm aware of are  
20 the prison calls, Your Honor.

21 THE COURT: To the extent that there might be issues  
22 concerning the accuracy of translations, or any audibility  
23 issues, concerning any recorded conversations, I would want to  
24 have a hearing on that sufficiently in advance of trial. At  
25 least a month or two prior to trial.

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1 Just to give the parties enough time then to make  
2 whatever corrections have to be made, if any. And the Court  
3 has to determine whether or not it will need its own  
4 interpreter to review any items.

5 If the dueling interpreters cannot agree on a  
6 particular phrase or language, and particularly, if it appears  
7 to be material, and that could be a pretty tedious process,  
8 and a difficult one. Given that Mandarin language  
9 interpreters are in very high demand in this particular area.  
10 So, while there maybe several of them, they are in very high  
11 demand. So it is not an easy thing to get several Mandarin  
12 interpreters for one proceeding. I have had experience with  
13 that in the past. So, it is going to take some planning to do  
14 that.

15 So, the government should plan on turning those over  
16 by August 3rd, the translations I'm talking about to be clear.

17 MR. SOLOMON: Yes, Your Honor.

18 THE COURT: How long do you think it will take you  
19 and your language experts to review anything and provide some  
20 assessment as to whether or not a hearing is going to be  
21 necessary?

22 MR. CLEARY: I suspect that will turn on the  
23 volumes, so maybe I can ask the government for just a ball  
24 park estimate of hours of tapes, the numbers of documents.

25 THE COURT: Do you have an idea at this point, if

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1 you can estimate.

2 MR. SOLOMON: I think it would be hard to estimate.  
3 We can correspond with Mr. Cleary after I consult with the  
4 F.B.I. today. I don't believe the volume is overwhelming  
5 though.

6 THE COURT: Why don't I just give you an equal  
7 six weeks to take a look at that, taking into account we are  
8 going into summer, there is Labor Day intervening. I think  
9 the Jewish holidays come early this year as well.

10 So let's say September 12th, if you can-- defense  
11 can provide a letter to the Court as to any issues that you  
12 see with respect to the translations.

13 MR. CLEARY: That is fine, Your Honor.

14 THE COURT: I think with respect to the protective  
15 order, correct me if I am wrong, the protective order provides  
16 that the remaining Rule 16 discovery will be provided  
17 four months prior to the trial date, correct?

18 MR. SOLOMON: 120 days, correct.

19 THE COURT: 120 days.

20 I would propose to set a trial date for January 7th,  
21 because I think that way, we will build in the time to get the  
22 discovery, the time to get the additional materials that the  
23 government is getting now, based on the new legislation that  
24 was passed by Congress in response to the Second Circuit's  
25 Microsoft decision.

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1 I assume some of those are going to be in Mandarin  
2 as well, as it has been in the past. It still has to go  
3 through the taint team and there is also information that is  
4 still pending from the State Department.

5 And, I also need time to give you-- get the  
6 supplemental briefing for the motion in limine, and to get you  
7 decisions on -- decisions on all the motions. I expect to  
8 have a separate decision on the Frank's motion and a separate  
9 decision on the motions in limine. But I will deal with all  
10 the motions in limine together in one decision. Okay.

11 I think however, that we-- is July 7th a good day  
12 for everybody?

13 MR. SOLOMON: January 7th.

14 THE COURT: I'm sorry, January. That would really  
15 freak everybody out. No, January 7th. Is that good for trial  
16 for everybody?

17 MR. SOLOMON: Yes, Your Honor.

18 MR. CLEARY: Fine, Your Honor, thank you.

19 THE COURT: Then, the government will work backwards  
20 from that, to provide counsel with the remaining discovery  
21 that you will get. But I would like to meet with the parties  
22 before that.

23 It would be my-- I'm sorry.

24 MR. SOLOMON: We are online.

25 THE COURT: You are connected?



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1 MR. SOLOMON: Yes.

2 THE COURT: It would be my intention to refer the  
3 jury selection to the Magistrate Judge, who is always selected  
4 by random selection.

5 And in which case, any issues concerning jury  
6 selection will be addressed to that Magistrate Judge. But I  
7 still would want to meet with the parties sometime way before  
8 that to discuss any issues that might have arisen.

9 So, the government should be providing the protected  
10 discovery by September 7th. By September 12th, I will be  
11 getting a letter from the defense counsel about translations.

12 So, perhaps maybe a time in October might be a good  
13 time for us to meet?

14 MR. SOLOMON: That's fine.

15 MR. CLEARY: Could we do earlier in the month, Your  
16 Honor?

17 THE COURT: How is Wednesday, October 3rd.

18 MR. SOLOMON: That is fine for the government.

19 MR. CLEARY: And the defense as well, Your Honor,  
20 thank you.

21 THE COURT: 10 o'clock is good for everybody?

22 MR. SOLOMON: Yes, Your Honor, thank you.

23 THE COURT: That will be for a status conference.  
24 Obviously, the Court will make itself available to the parties  
25 if issues should arise that you feel require an in person

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1 conference. Just coordinate that with my deputy. It is  
2 always helpful if we get something in writing that clarifies  
3 for us what the issues are. A simple letter will do in that  
4 regard.

5 I will enter an order of excludable delay until  
6 January 7th for the trial. There is a substantial amount of  
7 work that still needs to be done. This is still a complex  
8 case and as I said, if we do need to meet earlier, we will try  
9 to accommodate the parties as best we can.

10 MR. CLEARY: Your Honor, if I can raise a record  
11 keeping matter.

12 THE COURT: Yes.

13 MR. CLEARY: I know there is a number of ex parte  
14 applications and orders. They are not-- a number of them are  
15 not showing up on the public docket. I am fine with that. I  
16 want to make sure those, the applications and for appeal  
17 purposes are all filed.

18 THE COURT: Everything has-- it appears on the  
19 docket as an ex parte application, but it is on the docket.

20 COURTROOM DEPUTY: They may not be able to see them.

21 THE COURT: The public is not going to be able to  
22 see it.

23 Again this is something that we need to explore  
24 either at the end of the case or even pretrial, right? To the  
25 extent that the need for the ex parte submission has

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1 dissipated, particularly once the trial is over, then that can  
2 all be unsealed.

3 Some of the ex parte applications have to do with  
4 trial strategy and so on. So, in terms of applications for  
5 certain discovery and so, obviously that may have to wait  
6 until the end of the case.

7 MR. CLEARY: That is fine Your Honor. I wanted to  
8 make sure that there is a record.

9 THE COURT: There is always a record. It is my  
10 policy even if it is ex parte. Nobody will be able to see it  
11 but the filing is there.

12 MR. CLEARY: And then related to that, the  
13 government has in light of I think it is the March 2017  
14 protective order, has the right to withhold in its entirety  
15 some--

16 THE COURT: March 2017?

17 MR. CLEARY: March 2017, protective order. They are  
18 granted the right to withhold in its entirety certain  
19 discovery, unspecified discovery. If they are-- we don't know  
20 whether they have done that or not. If they are going to do  
21 that, we ask that a record be made for appeal purposes, of  
22 what it is that is discoverable but not being provided to us,  
23 either in its entirety or because it is redacted.

24 THE COURT: You are talking about CIPA material.

25 MR. CLEARY: I'm not sure it is CIPA, in the order

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1 that the Court issued, unrelated to CIPA in March of 2017--

2 THE COURT: That would be docket entry 39. So that  
3 we have a-- is that docket entry 39?

4 Yes.

5 MR. CLEARY: It is.

6 THE COURT: That is the order itself. But that was  
7 based on the government's ex parte motion which is docket  
8 entry 38.

9 MR. CLEARY: As Your Honor knows, that authorizes  
10 the-- among other things, the government to withhold certain  
11 discovery from the defense. If they are doing that, we would  
12 like a record for appeal purposes of what that discovery is.

13 THE COURT: It is in the ex parte application.

14 MR. CLEARY: Okay. It is identified there.

15 THE COURT: Yes.

16 MR. CLEARY: Fine.

17 THE COURT: Yes, it is identified there. There are  
18 a number of exhibits.

19 MR. CLEARY: In that case, I have nothing further.

20 THE COURT: Again it provides as well-- what the  
21 government was requesting was delay of discovery to withhold  
22 certain discovery and to provide redacted discovery.

23 So it is very likely just looking at this that some  
24 of this-- that this will be moot later, because some of this  
25 is going to have to be disclosed as 3500 material anyway.

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1 MR. CLEARY: Thank you, Your Honor, I have nothing  
2 further.

3 THE COURT: That is all been preserved. Thank you.

4 MR. SOLOMON: Your Honor, I'm sorry. We have one  
5 additional thing.

6 THE COURT: Yes, I'm sorry.

7 MR. PRAVDA: We have one additional point we would  
8 like to raise Your Honor, as I think the Court will recall,  
9 the defense has been asking us to identify by count, which  
10 specific victims or which specific individual, visa  
11 application was submitted, that the government intends to  
12 offer proof of at trial.

13 We turned over yesterday to the defense, a list Your  
14 Honor of approximately fifty individuals, with respect to  
15 Counts One through Four, and possibly 25 individuals with  
16 respect to Count Five. So that has now been disclosed to the  
17 defense Your Honor.

18 I wanted that to be on the record for the Court.

19 THE COURT: Okay.

20 MR. PRAVDA: We reserve the right to amend those  
21 lists, Your Honor, to continue to prepare the case for trial.  
22 This is our present intent with respect to the trial.

23 THE COURT: Okay.

24 MR. SOLOMON: Thank you Your Honor.

25 THE COURT: Thank you very much.

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1 MR. CLEARY: Thank you.

2 THE COURT: Marshals, you may take charge.

3 (Matter concluded.)

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7 I CERTIFY that the foregoing  
8 is a correct transcript from  
9 the record of proceedings  
10 in the above entitled matter.

9

10 s/Richard W. Barry

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11 Richard W. Barry, RPR

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